

1 CHAIRMAN BIBLE: One individual has a travel plan to
2 make. That would be Ralph Sims, travel arrangements? And I
3 believe you sent us some material, did you not?

4 MR. SIMS: Yes, this may help when I give the oral
5 testimony. Really, it might just be two items.

6 CHAIRMAN BIBLE: A letter from you and from your
7 Counsel, correct?

8 MR. SIMS: That would be correct.

9 CHAIRMAN BIBLE: Well, why don't you go ahead and
10 identify yourself.

11 MR. SIMS: Thank you, Mr. Chairman and members of the
12 Subcommittee. My name is Ralph Sims. I am pleased to appear
13 before you to testify on behalf of the Commercial Internet
14 Exchange, the Oregon Internet Service Providers Association and
15 the Washington Association of Internet Service Providers. Who
16 collectively represent over 200 ISP's in the United States. Also
17 with me today is Jim Halpert of Piper and Marbury, who is Counsel
18 to the Commercial Internet Exchange.

19 I am Director of Research and Development for WinStar
20 Broadband Services and have been a provider of Internet Services
21 since 1987. I would like to take a few moments today and offer
22 some information about the difficulties and realities involved in
23 preventing illegal gambling traffic on the Internet.

24 The associations of which I am a member do not
25 support illegal activities and their members are quick to take
26 action against those using their services for such activities.
27 Many people believe that Internet Service Providers or ISP's act
28 as a traffic officer that can easily control information to and
29 from certain points. The difficulty lies in the fact that the

1 Internet is dynamic. And while that is its strength, it is also
2 the primary reason that providing traffic control is virtually
3 impossible.

4 The various computers on the Internet, whether the
5 one on your desk, the super computers at research facilities or
6 your lap top, all are assigned a numerical address when they
7 access the Internet. These numerical addresses are issued to an
8 organization, such as an ISP, for use by those using its
9 services. These are known as Internet Protocol or IP addresses
10 and are the means by which computers identify themselves.

11 If all machines can handle these numbers quite
12 effectively, people can't. And hence a system was developed to
13 map these IP addresses to actual names that can easily be
14 assimilated by the users of those machines. For instance, a
15 computer's IP address may be 152.163.210.10, but it is known as
16 www.aol.com. In fact, www.aol.com has 18 IP addresses that it is
17 known to by other machines.

18 This mapping is part as what is known as domain name
19 service or DNS. And it can be compared to a global telephone
20 book which anyone can make changes to any entry. While a
21 gambling site may be at one Internet address one day, it can be
22 at another on the next. Simply put, gambling or otherwise, sites
23 move. And they can move quickly, often within minutes. The
24 techniques to do this are available today as commercial products
25 from IBM, F5 Labs, Cisco Systems and others and are used to
26 provide extremely high reliability and redundancy in the event
27 access to a particular Internet site, either by IP address or by
28 name, is interrupted or severed.

1 IBM's product came out of its methods used to keep
2 the web sites of the Atlanta Olympics highly accessible during
3 times of severe network congestion and overload. Internet
4 service providers cannot block sites effectively. As soon as the
5 blocked site moves to another Internet address, the original
6 filter is no longer useful and legitimate sites might become
7 unavailable as the entire block of IP addresses, containing
8 numerous innocent networks is banned across the Internet.

9 Second, blocking efforts can slow down a network for
10 all users. The more blocks an ISP must put in place, the slower
11 the Internet access. Every time an Internet user requests access
12 to a site, the network will cross check that site request with a
13 blocked site list. And as you can imagine, it would not take
14 very long before the blocked site list gets quite large.

15 Soon, valuable time will be lost on each site
16 selection processed to cross check without any assurance that the
17 blocking effort will even be effective. Furthermore, an ISP's
18 blocking efforts would only work for its own network. Thus, if
19 an Internet Service Providers blocking efforts could somehow
20 overcome these obstacles, they would be effective only on that
21 Service Provider's own system and networks.

22 Unless all ISP's in the United States took the same
23 steps, millions of other users would still have access to the
24 illegal site. Finally, implementing and updating blocks is time
25 consuming and costly. There are over 6,000 ISP's in this
26 country, most of whom are small businesses who compete in a
27 highly competitive market by providing low cost services with
28 lean staffing and slim margins. These providers have neither the

1 staff nor the resources to police traffic moving through their
2 networks.

3 In conclusion, Mr. Chairman and members of the
4 Subcommittee, Internet Service Providers are willing to play a
5 constructive role in helping law enforcement to address illegal
6 gambling activity. Many ISP's already work with law enforcement
7 and government agencies to prevent illegal activities over the
8 Internet. However, it is virtually impossible for our industry
9 to stop illegal Internet gambling traffic for the reasons I've
10 outlined.

11 We as an industry cannot easily comply with
12 legislation that required a technical solution to the issue of
13 illegal activities on the Internet. And would welcome the
14 opportunity to further discuss this dilemma and respond to any
15 questions and concerns. Thank you.

16 CHAIRMAN BIBLE: Questions?

17 MR. MCCARTHY: Yes, Mr. Chairman, two questions. The
18 first one was you're quick to take action and I think I'm quoting
19 you correctly, quick to take action against members committing
20 illegal acts. Could you describe to us how you discern that they
21 are committing illegal acts? And when you did that, what action
22 you've taken against some of your members? Because we do know
23 that there are some ISP's processing Internet bets from overseas
24 gambling sites.

25 MR. SIMS: Yes, sir. I would give you examples from
26 my own ISP service which was, would be somewhat common across the
27 Internet. If we were notified, for instance, that there were
28 content that were deemed illegal on one of our networks, we would
29 remove that content. Whether by contacting the individual that

1 placed it there to have them remove it. Or we would go ahead and
2 deny access to that, to that content itself.

3 MR. MCCARTHY: Who are you counting on to notify you?

4 MR. SIMS: People that, who have the purview to make
5 those decisions.

6 MR. MCCARTHY: Such as?

7 MR. SIMS: Well for instance, we have approximately
8 3,500 individuals that have their web pages on one of our
9 machines, one of our servers.

10 MR. MCCARTHY: Yeah.

11 MR. SIMS: And these would contain hundreds of
12 thousands of references to other Internet sites across, you know,
13 all over the world. They would also have information such as
14 baby pictures or, what I did last summer. Maybe they are selling
15 some kind of an item, gifts or something and using their web site
16 for that purpose. We don't have the ability to take a look at
17 every one of those references that people have.

18 MR. MCCARTHY: You're straying from --

19 MR. SIMS: Well --

20 MR. MCCARTHY: -- your comment and my question.

21 MR. SIMS: I'm sorry.

22 MR. MCCARTHY: Your quote was, we're quick to take
23 action against members who commit illegal acts.

24 MR. SIMS: This --

25 MR. MCCARTHY: My question was, how do you get
26 informed about the illegal acts --

27 MR. SIMS: Somebody --

28 MR. MCCARTHY: -- and what specific actions have you
29 taken against them?

1 MR. SIMS: Somebody would bring that information to
2 our attention.

3 MR. MCCARTHY: Like?

4 MR. SIMS: Perhaps law enforcement. Perhaps somebody
5 that went to a site and saw that there was something that we
6 might need to be concerned about. They would let us know about
7 it and then we could take action.

8 MR. MCCARTHY: Do you have any samples you could give
9 us?

10 MR. SIMS: Internet pornography would be one.
11 Pornography --

12 MR. MCCARTHY: No, no, I mean specific examples of
13 how you got complaints and what action you took against the
14 perpetrator of the illegal act.

15 MR. HALPERT: Commissioner, if I could answer that.

16 CHAIRMAN BIBLE: Sure. Identify yourself again,
17 please.

18 MR. HALPERT: I'm Jim Halpert and I'm Counsel of the
19 Commercial Internet Exchange Association, a trade association of
20 150 Internet Service Providers. And there is a system in place
21 right now to deal with copyright infringement which was adopted
22 in legislation last year by Congress. It passed both houses of
23 Congress almost unanimously. And what this does is it has a
24 system where notices come into an agent, sometimes ISP's call
25 this person the abuse or complaint processing person.

26 And this person is prepared to receive complaints.
27 There is a single person within an entity that's designated to do
28 that. The complaints come in and they can be handled quickly by

1 some, rather than by some customer service personnel who gets a
2 phone call.

3 MR. MCCARTHY: Okay, Mr. Sims has to catch his plane.
4 Let me see if I can narrow this down.

5 MR. SIMS: I've got some time to answer your
6 questions.

7 MR. MCCARTHY: Okay. That's an illegal act or that's
8 a potential illegal act under copyright law. I'm sorry, I
9 thought you were addressing illegal acts as in illegal gambling.

10 MR. HALPERT: Well, in the event that an ISP is
11 notified they are under a legal obligation --

12 MR. MCCARTHY: Have you been notified of any illegal
13 gambling acts?

14 MR. SIMS: No, sir.

15 MR. MCCARTHY: Okay. Do you have a written Mission
16 Statement as a trade association about what you will and should
17 do if illegal gambling acts are reported?

18 MR. SIMS: Broadly defined as illegal activities that
19 we do not --

20 MR. MCCARTHY: That's not what I'm asking. I'm
21 asking about gambling.

22 MR. SIMS: Specifically, no sir.

23 MR. MCCARTHY: Okay. So the ISP Industry, and don't
24 get me wrong, my only regret is that I didn't buy a few shares in
25 the seven or eight ISP's about two years ago. So I think ISP's
26 do many marvelous things, but they are not helping us address
27 this problem which many are estimating is going to grow into many
28 billions in Internet international gambling.

1 I have not yet heard, other than why it would be
2 crazy and insane for us to suggest that ISP's be a part of the
3 solution, I haven't heard any real thought -- all right I'm going
4 to give my second question. You've just been appointed Deputy
5 Attorney General of the U.S. Department of Justice and you can
6 share this responsibility, gentlemen. And your assignment is to
7 give the President of the United States, so he can give to
8 Congress, a strategy to deal with Internet international
9 gambling, which is now at a level of 40 billion dollars. What's
10 your strategy?

11 Besides the fact that ISP's should be exempted from
12 any part of this.

13 MR. SIMS: I'm here to address the technical issues
14 and not the legal issues. I would have to leave those to those
15 that know more about that than I do.

16 CHAIRMAN BIBLE: That would be your lawyer.

17 (Laughter.)

18 MR. HALPERT: And as a lawyer --

19 MR. SIMS: I do not play a lawyer on the Internet,
20 sir, I'm sorry.

21 MR. HALPERT: The regime that ISP's have developed
22 and Commissioner, with due respect, I would tell you that our law
23 firm counsels Internet Service Providers and when it --

24 MR. MCCARTHY: We took a wild guess that that might
25 be the case when we read your letter.

26 MR. HALPERT: -- when they become aware of gambling
27 content on their servers, they remove it.

28 MR. MCCARTHY: Okay.

1 MR. HALPERT: And it's, we're not revealing the
2 specific clients or the very specific advice. I'll just say it
3 is very advisable to that and that Internet Service Providers
4 recognize that where their facilities are being used by somebody
5 else to engage in any illegal activity, they have an obligation
6 to remove that content or to force the customer that's put the
7 content on line, to remove it from their, from their systems.

8 But the, with regard to an enforcement regime on a
9 global scale dealing with this specific problem, our
10 recommendations would first of all be to establish a system where
11 notice comes to, again, the specific point on the, designated
12 point on the Internet Service Provider's network. And once any
13 sort of notice of a complaint about illegal gambling activity is
14 received, again the example of WinStar, one company with 3,500
15 sites is actually quite small compared to, for example, America
16 Online, which will have millions and millions of sites.

17 Maybe other providers have hundreds of thousands or
18 millions of sites. They can't, they simply do not have the
19 resources or the economics to go around monitoring what's on
20 those sites --

21 MR. MCCARTHY: I understand the complexity of this.
22 I understand that whatever might be proposed has to have some
23 rationality to it. You know, we can't ask impossible things to
24 be done, but I want to approach it from the other end. Help us.

25 MR. HALPERT: If the notice, the notice should go to
26 a centralized point, with somebody who is qualified --

27 CHAIRMAN BIBLE: And when you say notice, you're
28 talking about a Court Order?

1 MR. HALPERT: No, no. Simply, it can be an e-mail.

2 But some sort of notice, ideally from a law enforcement official
3 who identifies themselves as such.

4 CHAIRMAN BIBLE: You would take down a site based
5 upon that?

6 MR. HALPERT: Yes.

7 CHAIRMAN BIBLE: All right.

8 MR. HALPERT: We would need immunity, ideally, either
9 by contract or by federal law from the site so that they don't
10 have a contract calaim against us for removing the content. But
11 typically Internet Service Providers have those contracts in
12 their Subscriber Agreements and their Customer Agreements and
13 they can just remove that material if it's illegal. You know
14 there can be close cases and some difficult cases, but the
15 Internet Service Provider, you know, so in the instance of a
16 close case it would be very helpful to have immunity.

17 Because the contract clauses typically say, where you
18 are engaged in illegal activity rather than when you, we think
19 you may be engaged in illegal activity. But when these notices
20 come in it's possible to get illegal gambling content and
21 potentially illegal gambling advertising off of all the servers
22 in the United States. With regard to foreign sites, the most
23 effective way to do this is probably, this is a difficult --

24 CHAIRMAN BIBLE: What is illegal gambling
25 advertising, I don't know exactly what that is?

26 MR. HALPERT: Well, it would be advertising for
27 illegal sites.

28 CHAIRMAN BIBLE: Okay.

29 MR. HALPERT: With regard to --

1 CHAIRMAN BIBLE: Not gambling advertising in general?

2 MR. HALPERT: No, no. And it would be helpful to be
3 informed because Internet Providers again are not experts on
4 gambling law. And it would be difficult for them to
5 distinguish. So really the ideal notice comes from a law
6 enforcement official whom we can trust --

7 CHAIRMAN BIBLE: And just based upon an e-mail from
8 a law enforcement official you take down a site?

9 MR. HALPERT: Saying who they are, where the content
10 is, that they believe that it violates the law.

11 CHAIRMAN BIBLE: No court process, you don't have to
12 be named as a party to any kind of court order or litigation or
13 anything of that nature?

14 MR. HALPERT: This is the solution that we are
15 proposing to get content off quickly on the Internet. And again,
16 there is some importance to have immunity from the, against
17 calaims from the person --

18 CHAIRMAN BIBLE: No, no --

19 MR. HALPERT: And we believe that this can be a rapid
20 way of getting illegal content off of the Internet. I would add
21 that there's a representative here, a lawyer for the American
22 Association of Universities, who are similarly concerned. And
23 they also have accepted this general type of frame work to deal
24 with illegal material on the Internet.

25 CHAIRMAN BIBLE: I guess, and let me just interrupt
26 you.

27 MR. HALPERT: Sure.

28 CHAIRMAN BIBLE: I see you people as being like a
29 phone company.

1 MR. HALPERT: Yes.

2 CHAIRMAN BIBLE: I'm surprised you don't compare
3 yourself to the phone company, where the phone company in effect
4 --

5 MR. SIMS: I don't think we want the regulations,
6 sir. I don't think we want the regulations.

7 CHAIRMAN BIBLE: No, no, I understand all the
8 regulations.

9 (Laughter.)

10 CHAIRMAN BIBLE: But I mean I don't see Ma Bell in
11 the business of policing wagering transactions over Ma Bell
12 unless law enforcement has gotten some authorization to put on a
13 tap or a trap of something like that.

14 MR. SIMS: You have two different components here and
15 I want to make one clear.

16 CHAIRMAN BIBLE: And it's very surprising you would
17 take down, you would take down a site based upon an e-mail from a
18 law enforcement official. That's kind of like somebody taking
19 down my phone, I guess, with the local police calling up and
20 saying, you know, disconnect that phone.

21 MR. HALPERT: Well, it would be to remove the
22 material on the site that allegedly violates the law. If the
23 entire site is an illegal gambling business and that's all that's
24 there, one would not remove it. But if it's a, you know, a 13
25 year old who happens to think it's cool to provide a link to some
26 other site, then you remove the hyper link which is just a,
27 really an Internet address that somebody can click on.

28 CHAIRMAN BIBLE: You're talking about the link?

1 MR. HALPERT: Yeah the link, rather than the entire
2 site.

3 CHAIRMAN BIBLE: But would you go in and expunge
4 content off of a site then that was up through your service?

5 MR. SIMS: There's two components here. One is what
6 an Internet Service Provider would do if there were content on
7 one of their servers. The other component is what an Internet
8 Service Provider would do to prevent access, illegal access to a
9 remote site. For instance an offshore site. If we established a
10 contact point within our organization that these types of
11 complaints could come to, I think we would also like to make
12 sure, somewhere along the way, that this information is with
13 somebody that's done their homework. Perhaps a regulatory agency
14 within the federal government or some kind of a source that we
15 know to be, to be valid.

16 So that is this person comes in and says x, y, z
17 material on your site violates this law, then we know that that
18 person is representing the law and is giving us some legal or
19 giving us a direction.

20 CHAIRMAN BIBLE: But the law on wagering data, for
21 instance, is an area where there's probably, well there is a lot
22 of disagreements among various jurisdictions as to the use of
23 wagering data. Is it used for betting, is it used for
24 recreational purposes? You know, what's the exact use of it?
25 And you can go to a site at probably any newspaper in the United
26 States and you can pull that up.

27 And certainly those newspapers are going to give you
28 information as to the point spread, say, on Sunday with the NFL.
29 Now somebody in Providence, New Jersey may say, hey, this

1 certainly violates what we allow here in Providence. Based upon
2 that kind of representation, you'll, you'd contact that site or
3 expertly expunge that off of that site if it's coming through
4 your server?

5 MR. HALPERT: Well, the information should come from
6 a federal or state law enforcement official, first of all, to --

7 CHAIRMAN BIBLE: Of any rank, caliber or just --

8 MR. SIMS: I think a recognized source.

9 MR. HALPERT: Yeah, we're happy to work with you on a
10 --

11 CHAIRMAN BIBLE: No, I'm --

12 MR. SIMS: Then let's work out the details.

13 CHAIRMAN BIBLE: You may be giving up too much.

14 MR. SIMS: That could be, but we need to work, we
15 need to work further on this.

16 CHAIRMAN BIBLE: And I don't know if that bothers
17 you, but I'm just, I'm concerned with somebody having the ability
18 to go in --

19 MR. SIMS: I'm not bother yet.

20 CHAIRMAN BIBLE: You know, some law enforcement
21 person or anybody --

22 MR. MCCARTHY: I think it would require more than
23 that.

24 CHAIRMAN BIBLE: You know I think you have to have
25 some process where there's adjudication.

26 MR. SIMS: That could very well be.

27 CHAIRMAN BIBLE: A Court determination, where people
28 have an opportunity to exercise their due process rights and that
29 whole sort of fundamental practice rights.

1 MR. HALPERT: I would point you, if this is of
2 interest to a regime. You know, we're in a situation where we're
3 being asked to do one thing that is technically almost impossible
4 which is to try to block access to these foreign sites which is
5 simply --

6 CHAIRMAN BIBLE: Foreign sites is a different, is
7 probably a different, you're talking about foreign gaming sites.

8 MR. HALPERT: Right, we're talking about domestic,
9 about sites that are operated by entities where the entity
10 jurisdiction is the U.S. Courts. And entity subject to the U.S.
11 law. And those entities can remove the -- on the one hand, there
12 is really a trade off here. To be faced with civil injunctions
13 of the sort that have been proposed in some legislation to try to
14 block out these access, or individual U.S. users access to
15 illegal sites.

16 And Mr. Sims testimony expalained why that was
17 problematic. The solution that has been developed in other
18 contexts is to remove content from these servers. And in the
19 copyright context there is a system where users can request that
20 their content be put back on line or else there were serious
21 sanctions for erroneous notifications.

22 And alternative would be to have process before that
23 material is removed.

24 CHAIRMAN BIBLE: It's kind of the American way.

25 MR. HALPERT: Yeah, 1084 has that. And we're
26 amenable to a whole variety of solutions but we're, you know, in
27 this context the industry, which makes no money, I would add,
28 from illegal gambling activity in its function as Internet
29 Service Provider of one or two very bad apples who are engaged in

1 the sort of activities that Commissioner McCarthy mentioned. But
2 this industry makes no money. On the other hand, it's being
3 asked to bear a very, very heavy burden to try to do something
4 that is technically impossible and very expensive and can disrupt
5 users access to lawful content.

6 And you know, again, the industry would be receptive
7 to due process protections with regard to take downs. But in
8 terms of trying to block user's access to these overseas sites or
9 sites that are not on the Internet Provider's network, that
10 simply doesn't work. It's very costly.

11 CHAIRMAN BIBLE: Is that what you were required to do
12 under the Kyl Bill that failed last year?

13 MR. HALPERT: In versions of that Bill, yes.

14 MR. MOORE: Help me a little bit. This Commission's
15 real concern is Internet gaming. And I believe that we've
16 already gone on record as being opposed to that, unanimously.
17 Whether it's legal or illegal, I'm against it. And you're
18 telling us, I think that I'm gathering, that it's going to be
19 just as hard to control legal gambling as it is illegal gambling,
20 or am I misreading you?

21 MR. SIMS: It's going to be very difficult, if not
22 impossible, for the Internet Service Provider to keep access from
23 a site, illegal access. Whether that site is providing access to
24 U.S. citizens illegally or whether an individual user on that
25 site is accessing even a U.S. site illegally.

26 MR. MOORE: But if we don't prohibit, not control it
27 or regulate it, but if we don't prohibit Internet gaming and
28 let's suppose it is legal in MGM Grand, we'll pick on, wants to
29 have Internet gaming, there's nothing to keep them from it. Now

1 then, let's say that it is illegal. What if a place in the
2 United States, I mean we do a lot of things illegally in the
3 United States. So what if he still wanted to have Internet
4 gaming, how would you catch him? And how would you control him?

5 MR. SIMS: It would be, step into your legal field
6 here. It would be, we would take a look at the site being housed
7 within the United States and applicable per the laws of either
8 the federal government or the --

9 MR. MOORE: So you can tell who it's coming from?

10 MR. SIMS: -- or the state. It, you may, it can be
11 determined which network that it is on and then you can contact
12 that network provider. And again, I think with a Court Order or
13 something would do this. And that network provider could provide
14 information on where that site actually sits. You know, if
15 there's legal satisfaction that there is illegality going on.
16 And then you could remove the content from the site or you could
17 remove that site's access from to the network at that point.

18 But again, if you have ten million people that are
19 accessing a site that is on the Internet it is, without removing
20 the site itself, it is virtually impossible to stop the access to
21 that site. Would you like some clarification?

22 MR. MOORE: Well, not really I don't guess. When we
23 prohibit this, how are you people going to help us? How are you
24 people going to help us control Internet gambling?

25 MR. HALPERT: What we have put forward is a system
26 where if the gambling content is, has been posted by one of these
27 bad apples in the United States, people engaged in illegal
28 activity, Internet --

29 MR. MOORE: What if it's a good apple?

1 MR. HALPERT: There are many people who place, the
2 overwhelming majority of content on the Internet, Commissioner,
3 is unlawful content many of which serve very important public
4 health purposes --

5 MR. MOORE: Sure.

6 MR. HALPERT: -- education purposes, etcetera. The
7 people who would use, who would violate federal law and put up,
8 or state law and put up illegal content on the Internet, if
9 Internet Providers received due notice and we're very amenable to
10 a due process, due process protections, Mr. Chairman. We stand
11 ready to assist in ensuring that that content is not on --

12 CHAIRMAN BIBLE: But you'd also settle for
13 indemnification though.

14 MR. HALPERT: Excuse me?

15 CHAIRMAN BIBLE: You'd also settle for full
16 indemnification, if you're fully indemnified against any kind of
17 wrongful act if you are enforcing some sort of an order from
18 somebody other than a Court.

19 MR. HALPERT: Well, we would need -- but if you're
20 Subcommittee were to see fit to have procedural protections, we
21 are very happy to see procedural protections.

22 CHAIRMAN BIBLE: Why don't you do this. This is a
23 pretty complicated topic here and I know you've got a really
24 tight travel schedule. Why don't you give this issue quite a bit
25 of thought and maybe give us eight or nine recommendations as to
26 how ISP's can be involved in the process. If you have eight or
27 nine ideas.

28 MR. SIMS: I'm sure within 6,500 ISP's we could come
29 up with a few. I would ask though, are you interested more in

1 removal of the content and how we might do that or are you
2 interested more in preventing Johnny Gambler in the state of Iowa
3 from accessing a site --

4 CHAIRMAN BIBLE: Probably both.

5 MR. SIMS: -- overseas.

6 CHAIRMAN BIBLE: Probably both.

7 MR. SIMS: Because the access issue --

8 CHAIRMAN BIBLE: Is a different issue.

9 MR. SIMS: -- is a technical issue. And the content
10 issue would be a legal issue.

11 CHAIRMAN BIBLE: Right.

12 MR. SIMS: And I think the two, the information is
13 going to come from two separate sources on the suggestions. We
14 don't have a good suggestion for --

15 CHAIRMAN BIBLE: I would like to take a look at both.

16 MR. SIMS: We don't have a good suggestion for the
17 access part because of the technical difficulties involved in
18 doing that. Maybe if we, you know, if we took six months or a
19 year and brain stormed with a group.

20 MR. MCCARTHY: We probably have about two weeks
21 before we write our final report.

22 (Laughter.)

23 MR. SIMS: Unfortunately, the wheels of ISP's,
24 because we are a fledgling industry, move a lot slower than the
25 government.

26 MR. MCCARTHY: Well, we know how fast ISP's operate
27 individually, so maybe you can get them to speed up a little bit.

28 MR. SIMS: We have some good ideas. We'll get back
29 to you.

1 MR. MCCARTHY: You said much more than you, at least
2 I heard you say much more than you said in your memo to Valerie
3 Rice, that you have here.

4 MR. HALPERT: Toward the end of the memo to Valerie
5 Rice, some of these suggestions are contained. The main problem
6 is there is a misunderstanding that Internet Service Providers
7 can serve, as Mr. Sims expalained, as a traffic cop and take care
8 of the problem of the small amount of illegal content that is
9 actually on the Internet.

10 The Internet was not designed to serve, to work that
11 way. It's designed rather to make different networks connect
12 with each other and even to survive disruptions in the way that
13 the network works.

14 CHAIRMAN BIBLE: Am I wrong if I analogize just to
15 requiring 18D for instance to ferret out all the illegal bookies
16 in the United States?

17 MR. HALPERT: It would be fairly similar. It would
18 actually be more complicated, given the way the Internet works,
19 to block it.

20 CHAIRMAN BIBLE: And you people at least are a
21 conduit and the middle man in the transaction. I don't know as
22 if you should be the policeman in the transaction. And I'm
23 clearly concerned if you are going to start removing things from
24 that based upon some representation of somebody without having
25 fully accorded due process or rights.

26 MR. HALPERT: And the legal -- I'm sorry, go ahead.

27 MR. SIMS: There are many players between the
28 Internet Service Provider and the end user when you get into
29 telephone companies and modem manufacturers and so forth.

1 CHAIRMAN BIBLE: Oh, I understand. A lot cases in
2 terms of Internet wagering were under the Wire Act because of the
3 connection between the computer and the ISP, it took place over
4 wires, it was a wire transmission.

5 MR. SIMS: People don't like to lose their
6 telephones. If, you know, you are able to work out something
7 with the telecommunications carriers that will actually
8 disconnect phone service from somebody that's using their phone
9 in an illegal manner, I think that you might be able to solve a
10 number of different issues that we're confronted with here.

11 CHAIRMAN BIBLE: The lining information is a perfect
12 example. Because I'm sure if you go in a jurisdiction in the
13 United States you are going to find a number of jurisdictions
14 that will take the position that lining prevention is information
15 that is illegal in shall be disseminated. And they'd be writing
16 you and telling you to take down the line information.

17 MR. SIMS: But then you also have the common carrier
18 and again --

19 CHAIRMAN BIBLE: You know, I just have some problems
20 with that.

21 MR. HALPERT: Well, 1084D has a system right now to
22 deal with common, use of common carrier facilities. And it
23 doesn't translate cleanly to the Internet because these
24 intermediary conduit providers we've been discussing and the
25 Internet Access Providers on the U.S. end of that technologically
26 cannot prevent use of their facilities. But there is a notice in
27 the due process protection there. There are other protections in
28 the copyright context.

1 But Congress, when it has considered the role of
2 Internet Providers to date, has never asked them to play this
3 policing role when they are the conduit. They have asked them
4 when the content is actually on a computer server that they
5 control, a web site has been posted there to play this role of
6 removing some of the content. And that's a role that, subject
7 again to proper process, our members stand willing to play.

8 CHAIRMAN BIBLE: I'm curious on the content
9 legislation or in the copyright legislation, did you get general
10 score, was there a general score for that legislation say that
11 magazine publishers, book publishers, newspapers, people that do
12 have copyright material?

13 MR. HALPERT: This was carefully negotiated in a
14 somewhat different context. Copyright is a strict liability
15 statute. So that ordinarily, it's simply copying in any manner
16 an Internet makes automatic almost incidental copies in the
17 course of many transmissions. End users don't see those. But
18 there was a strong argument that there was a lot of copyright
19 infringement going on every single time a message was sent across
20 the Internet.

21 And notwithstanding the law that was much more
22 favorable to them in terms of holding Internet Providers liable,
23 the intellectual property owners, big intellectual property
24 owners worked out a solution to the copyright infringement
25 problem. Again, in a context where their rights were much
26 broader than those under criminal law, which is something that
27 we, should be modified a little, somewhat in the, in the context
28 of gambling, but it provides one model.

1 In other contexts Congress has, for example,
2 completely immunized Internet Service Providers for obscene
3 material, for material that is harmful to minors or soft-core
4 pornography. And in the context of material that violates state
5 criminal laws and federal and state civil laws, has held that the
6 Internet Provider is not liable for the, for content supplied by
7 another content provider.

8 So for example, America Online in a case decided in
9 Washington, D.C. involving Matt Drudge, who is now quite a famous
10 person, was held not to be liable for libelous material that
11 Drudge placed on his, on the AOL Network concerning Sidney
12 Blumenthal, another person who has since become quite famous in
13 the context of some other things.

14 CHAIRMAN BIBLE: We're trying to forget those names.

15 MR. HALPERT: Well in this case, America Online, even
16 though Drudge, it advertised Matt Drudge as being on its network
17 and paid him some money, was not liable even for Drudge's
18 content. So the Internet, because it is a different medium, it
19 is a, as the Supreme Court stated in ACLU versus Reno, which is
20 the major landmark decision on the Internet. The Internet allows
21 anybody to be, have a soapbox. Anybody can publish. And for
22 that reason, there are particular First Amendment protections and
23 Congress has also chosen particular protections from liability
24 against Internet Service Providers for content provided by other
25 parties.

26 And here Internet Providers are not profiting
27 directly from gambling activity at all. They tend to charge flat
28 rates for their service. And it would be very unjust to hold

1 them liable, criminally or civilly, for content that they cannot
2 control.

3 CHAIRMAN BIBLE: Well, if you think about the two
4 issues that we asked you and we are on a very short time frame.
5 We appreciate your appearance today.

6 MR. HALPERT: Thank you so much.

7 MR. SIMS: Thank you.

8 CHAIRMAN BIBLE: Is there anybody else that wants to
9 talk about the first issue that we talked about in terms of
10 applicability of a ban on the Internet that has any words of
11 wisdom that you'd like to provide us? The record should reflect
12 no appearances.

13